

**CANAL AND DITCH MODIFICATIONS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David P. Hinkins**

House Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill establishes requirements by which a property owner may modify a water channel that penetrates the property owner's property.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ permits a property owner to modify a water channel that penetrates the property owner's property;
- ▶ requires a property owner to provide certain notice to a channel owner when modifying a water channel;
- ▶ requires a property owner that modifies a water channel to pay costs associated with the construction of the modification;
- ▶ requires a channel owner to pay ongoing operations and maintenance costs for a modified portion of a water channel;
- ▶ allows a channel owner to review a proposed modification to a water channel at the property owner's expense;
- ▶ requires the creation of an easement; and
- ▶ prohibits a property owner that modifies a water channel from inhibiting the channel owner's use of water in the water channel without the channel owner's consent.

**Money Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 ENACTS:

33 [73-1-15.5](#), Utah Code Annotated 1953



35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section [73-1-15.5](#) is enacted to read:

37 **[73-1-15.5](#). Modification to water channel by a property owner -- Notice, review,**  
38 **and approval -- Liability.**

39 (1) As used in this section:

40 (a) "Channel owner" means the person that owns a water channel.

41 (b) "Penetrate" means that both lateral sides of a water channel cross completely over a  
42 property line.

43 (c) "Property owner" means the person that owns real property that a channel owner's  
44 water channel penetrates.

45 (d) (i) "Water channel" means a ditch, canal, drain, or buried irrigation conduit.

46 (ii) "Water channel" does not include a culinary water or secondary water pipe.

47 (2) (a) Except as provided in Subsection (2)(b), if a water channel penetrates real  
48 property that is not owned by the channel owner, the property owner may, to the extent that the  
49 water channel penetrates the property, modify the course or location of the water channel to  
50 another location on the property if the modification is conducted in accordance with:

51 (i) applicable local laws and ordinances, except to the extent that a local law or  
52 ordinance conflicts with a provision of this section;

53 (ii) applicable laws or rules established by the state, including Section [73-1-15](#);

54 (iii) applicable laws or rules established by the federal government; and

55 (iv) the provisions of this section.

56 (b) A property owner may not modify the course or location of a water channel under  
57 Subsection (2)(a) if:

58 (i) the modification requires a change application described in Section [73-3-3](#); and

59           (ii) the state engineer has not approved a change application described in Section  
60 73-3-3 for the modification.

61           (3) (a) A property owner that seeks to modify the course or location of a water channel  
62 under this section shall provide the channel owner written notice:

63           (i) that complies with the requirements described in Subsection (3)(b);  
64           (ii) by certified mail; and  
65           (iii) not less than 45 days before the day on which the property owner begins  
66 construction of the modification to the water channel.

67           (b) A notice described in Subsection (3)(a) shall include:

68           (i) a written description of the modification the property owner seeks to make to the  
69 water channel;

70           (ii) detailed plans and specifications, prepared by a licenced engineer, that show the  
71 modifications the property owner seeks to make to the water channel;

72           (iii) a description of how the property owner plans to comply with the requirements  
73 described in Subsection (8);

74           (iv) the approximate date on which the property owner plans to begin construction on  
75 the modification to the water channel;

76           (v) the approximate date by which the property owner expects the modification to be  
77 complete;

78           (vi) the name, telephone number, and mailing address of at least two competent  
79 professionals that the property owner selects in accordance with Subsection (3)(c), from which  
80 the channel owner may select one to review the proposal; and

81           (vii) a telephone number, email address, and mailing address at which the property  
82 owner may be contacted.

83           (c) When selecting a professional described in Subsection (3)(b)(vi) to include in the  
84 notice, a property owner:

85           (i) shall select a person that will provide impartial judgement of the proposed  
86 modification;

87           (ii) shall select a person that the property owner believes will provide a good-faith  
88 review of the proposed modification; and

89           (iii) may not select a person that is associated with the property owner or the proposed

90 modification.

91 (4) (a) Within 30 days after the day on which a channel owner receives a notice  
92 described in Subsection (3), the channel owner:

93 (i) (A) may, at the property owner's expense, retain the services of a person described  
94 in Subsection (3)(b)(vi) to review the proposed modification; or

95 (B) may, at the channel owner's expense, retain the services of a person that is not  
96 described in Subsection (3)(b)(vi) to review the proposed modification; and

97 (ii) shall review the notice, and:

98 (A) if the channel owner approves of the modification described in the notice, provide  
99 the property owner written notice of the approval; or

100 (B) subject to Subsection (4)(b), if the channel owner rejects the modification  
101 described in the notice, provide the property owner written notice of the rejection and the  
102 reason for the rejection.

103 (b) A channel owner may only reject a property owner's proposed modification if, after  
104 the channel owner's review, the channel owner determines that the modification is reasonably  
105 likely to result in a violation of Subsection (8).

106 (5) If a channel owner selects a person described in Subsection (3)(b)(vi) to review the  
107 proposed modification:

108 (a) the person shall charge the property owner for the full cost of reviewing the  
109 proposed modification and may not charge the channel owner for any cost associated with  
110 reviewing the proposed modification; and

111 (b) the property owner is responsible for paying the charges described in Subsection  
112 (5)(a).

113 (6) If a channel owner approves a modification under Subsection (4)(a)(ii), the property  
114 owner:

115 (a) shall construct the modification in accordance with the plans and specifications  
116 described in Subsection (3)(b)(ii);

117 (b) shall ensure that the modified water channel is of as good or better quality than the  
118 original water channel; and

119 (c) is responsible for all expenses related to the construction of the modification to the  
120 water channel.

121 (7) In accordance with state and local laws, when a property owner relocates a channel  
122 owner's water channel under this section:

123 (a) (i) the property owner shall grant and record a new easement for the relocated  
124 portions of the water channel; and

125 (ii) the channel owner shall, simultaneous with a property owner's action described in  
126 Subsection (7)(a), execute and record a document to release any existing easement that is  
127 associated with the original portions of the water channel that are relocated; or

128 (b) the property owner and channel owner shall jointly execute and record a stipulation  
129 and cross-conveyance describing the relocation of the water channel easement.

130 (8) (a) A property owner shall, before the property owner begins construction of a  
131 modification, negotiate with the channel owner regarding any of the following that are  
132 necessary for the construction:

133 (i) the timing, manner, and duration of any restrictions or impediments to the flow of  
134 water through the water channel; and

135 (ii) the extent to which the property owner may inhibit the channel owner's use of water  
136 in the water channel.

137 (b) A property owner may not, during or as a result of the construction of a  
138 modification to a water channel under this section:

139 (i) unless previously negotiated with the channel owner under Subsection (8)(a),  
140 impede the flow of water in the water channel or inhibit the channel owner's use of water in the  
141 water channel; or

142 (ii) violate an applicable law, ordinance, or construction standard required by the state  
143 or the municipality or county in which the modification is made.

144 (9) After a property owner completes a modification to a water channel in accordance  
145 with this section, the channel owner is responsible for the operation and maintenance of the  
146 portions of the water channel that were modified.

147 (10) A person that is injured by a modification made to a water channel under this  
148 section has a cause of action against the person who modified the water channel.